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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955.

No. 180

MASTERCRAFTERS CLOCK & RADIO CO.,
Petitioner,

vs.

VACHERON & CONSTANTIN-LE COULTRE WATCHES, INC., AND JAEGER-LE COULTRE, S.A.,
Respondents.

PETITION FOR REHEARING.

RE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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PETITION FOR REHEARING.

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

MAY IT PLEASE YOUR HONORS:

The petitioner seeks a rehearing of its petition for writ of certiorari heretofore filed on June 27, 1955, upon the proposition that not only is the decision of the Court of Appeals for the Second Circuit in conflict with decisions of this Court[1] and the Courts of Appeals of other Circuits[2]

1. *Kellogg* v. *National Biscuit Co.*, 305 U. S. 111.

2. *Swank, Inc.* v. *Anson, Inc.*, 196 F. 2d 330 at 332 (C. A. 1); *Gum, Inc.* v. *Gumakers of America, Inc.*, 136 F. 2d 957 at 960

and in conflict with decisions of the State Courts of New York,[3] but such decision establishes a precedent whereby a Federal court by its decision with respect to a question of common law may radically depart from the common law of the forum and establish its own interpretation of the common law, contrary to the proposition established by this Court in *Erie Railroad Company* v. *Tompkins*, 304 U.S. 64.

Petitioner as well as respondent agree that in a civil action for unfair competition where Federal jurisdiction is founded solely on diversity of citizenship and the amount of the controversy, the judgment in question involves solely the application thereto of the law of the forum State, *i.e.* New York. Such is the scope of Federal jurisdiction established by the Supreme Court of the United States in *Erie Railroad Company* v. *Tompkins*, *supra*.

In the case at bar, the action was upon a question of unfair competition. The State Courts of New York, the forum State, have judicially established the criteria by which such questions are resolved.[4] The District Court

(C. A. 3); *American Fork & Hoe Co.* v. *Stampit Corp.*, 125 F. 2d 472 at 475 (C. A. 6); *West Point Mfg. Co.* v. *Detroit Stamping Co.*, 105 USPQ 200 at 207 (C. A. 6); *Zangerle & Peterson Co.* v. *Venice Furn. Novelty Co.*, 133 F. 2d 266 at 270 (C. A. 7); *Fruit Growers Coop.* v. *M. W. Miller & Co.*, 170 F. 2d 834 at 837 (C. A. 7); *J. C. Penney Co.* v. *H. D. Lee Mercantile Co.*, 120 F. 2d 949 (C. A. 8); *Pagliero et al.* v. *Wallace China Co., Ltd.*, 198 F. 2d 339 at 343 (C. A. 9); *Reynolds & Reynolds Co.* v. *Norick et al.*, 114 F. 2d 279 at 281 (C. A. 10).

3. *Mayco, Inc.* v. *Hampden Sales Assn.*, 77 N. Y. S. 2d 510 at 516 (N. Y. S.); *Raenore Novelties, Inc.* v. *Superb Stitching Co.*, 61 USPQ 59 at 60 (N. Y. S.); *Herzman Scarfs, Inc.* v. *Baar & Beards, Inc.*, 95 USPQ 348 (N. Y. S.); *American Merri-Lei Corp.* v. *Jet Party Favors, Inc.*, 97 USPQ 484 at 485 (N. Y. S.); *Walco Bead Co.* v. *Union Novelty Co., Inc.*, 89 USPQ 647 at 649 (N. Y. S.); *Squeezit Corp.* v. *Plastics Corp.*, 103 USPQ 225 at 226 (N. Y. S.).

4. See footnote 3, *supra*.

(Judge McGohey) recognized the established procedure of following the law of the forum and did so in this case in arriving at his determination of the question. This is readily evident from the list of cited New York cases appearing in his decision in this case (R. Vol. I, p. 460a *et seq.*).

Under the well-founded doctrine as developed by this Court in *Erie Railroad Company* v. *Tompkins, supra,* a decision of a Federal Court of Appeals on an important question of common law, such as here involved, to-wit, the right of a manufacturer to copy the unpatented design of an article of manufacture, should not be permitted to reverse a Federal District Court whose decision was based upon and concluded through the application of the local law as announced by the State Courts of that locality.

As the error of the decision by the Court of Appeals for the Second Circuit in this case is in its interpretation of the common law of the State of New York, such decision thereby departs in spirit from the recognized precedent set forth by this Court in its decision in *Erie Railroad Company* v. *Tompkins, supra,* and thus it becomes imperative for this Court to review such decision.

It is respectfully submitted that this petition for rehearing should be allowed.

Respectfully submitted,

MASTERCRAFTERS CLOCK & RADIO CO.,
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CERTIFICATION PURSUANT TO RULE 58.

I, Clarence E. Threedy, counsel for petitioner, hereby certify that this petition for rehearing is presented in good faith and not for the purpose of delay and is upon grounds available to but not previously presented by petitioner, as established by this Court in *Schriber-Schroth Co.* v. *Cleveland Trust Co.*, 305 U.S. 47, 50, and is restricted to the grounds above specified.

CLARENCE E. THREEDY.